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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,629	11/07/2001	Gary Jack Reed	31115-pa	4830

7590

12/16/2002

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EXAMINER

BONDERER, DAVID A

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 12/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/010,629

Applicant(s)

REED, GARY JACK

Examiner

D. Austin Bonderer

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11-7-01.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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## 1 DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 3 is rejected under 35 U.S.C. 102(b) as being anticipated by Errico et al ('911).

Errico discloses a locking bone screw comprising:

- A threaded shaft 126;
- A rotational means 122;
- A cup 200 with,
  - A rotational means receiving area 205,
  - A transverse slot 206;
- A rod 205 passing through the slot 206;
- Means to fix the rod (Fig 9);
- Method of deploying fasteners with support cups (Col. 4, 5<sup>th</sup> paragraph and on);
- Deploying support rods (Col. 4, 5<sup>th</sup> paragraph and on);
- Rods abut the fasteners (fig 9); and
- Fixing both the rods and the fasteners (Col. 4, 5<sup>th</sup> paragraph and on).

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Errico ('911) in view of Ross.

Errico lacks the use of a two separate thread patterns on the screw. Herbert teaches the use of two separate thread patterns with an offset crest that form establishes a compressive force. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Errico with the two tread patterns as taught by Ross in order to keep the screw under tension while in the bone. This tension keeps the screw from moving (Col. 1, line 62).

5. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Errico/Ross as applied to claim 4 above, and further in view of Jackson.

Errico/Ross lack the use of a thread that induces a radial inward force. Jackson teaches the use of a thread pattern that pulls the opposing walls of the implant toward the screw. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Errico/Ross with the thread as taught by Jackson in order to better secure the screw. The pushing out of the bone material can allow for the failure of the screw (Col. 2, lines 20-25).

### *Claim Objections*

6. Claim 6 is objected to because of the following informalities: the term "free" appears to be a mistake. The claim was examined as if the word was force. Appropriate correction is required.

### *Specification*

7. The abstract of the disclosure is objected to because of the use of the term "said" and it is in a claim format, see below. Correction is required. See MPEP § 608.01(b).

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8. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### *Conclusion*

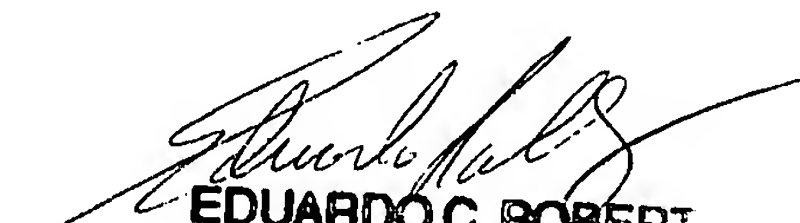
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Errico et al. ('286, '508, '834, '911<sup>184</sup>), Ralph et al., Giannuzzi et al., Grell et al., Penning, Schenk, Herbert, Moore, and Steffe disclose types of Orthopedic devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Austin Bonderer whose telephone number is 703.306.5911. The examiner can normally be reached on Monday- Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P Shaver can be reached on 703.308.2582. The fax phone numbers for the organization where this application or proceeding is assigned are 703.305.7687 for regular communications and 703.305.7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.113.

dab  
December 9, 2002

  
EDUARDO C. ROBERT  
PRIMARY EXAMINER